

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
(SOUTHERN DIVISION)

ALBERT YATES and ANN YATES,

Case No. 1:21-cv-00962-HYJ-PJG

Plaintiffs,

Hon. Hala Y. Jarbou

v

KYLE MILLER LLC, d/b/a RIDGEWOOD
BUILDERS; and KYLE MILLER,
an individual,

Defendants.

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**DEFENDANTS RIDGEWOOD BUILDERS AND KYLE MILLER'S
MOTION FOR DISMISSAL BASED ON SPOILATION OF EVIDENCE
AND FOR SUMMARY DISPOSITION PURSUANT TO FRCP 56**

Now comes the Defendants Kyle Miller, individually and Kyle Miller LLC, d/b/a Ridgewood Builders by and through their attorneys of record, SECREST WARDLE, and hereby move this Court pursuant to its equitable jurisdiction and FRCP 56, for summary disposition of Plaintiff's First Amended Complaint and in support thereof states as follows:

1. Critical material evidence was intentionally destroyed and demolished by the Plaintiffs after they had retained an attorney and after they had filed suit against the Defendants. The Plaintiffs demolished the residence that was being rebuilt by Ridgewood Builders after they discharged the defendant from the job. Central to this lawsuit are allegations

that the foundation of the residence was incapable of supporting the new rebuild and that portions of the construction were defective, not code compliant or otherwise unsatisfactory. The destruction of the home during the pendency of the lawsuit prohibits the defendants from mounting a defense to the allegations or otherwise determining a cost to correct the claimed defects thus prohibiting them from properly defending the claims. Dismissal is the appropriate remedy.

2. Individually named defendant Kyle Miller should be dismissed from the suit with prejudice as, at all times, he was working for the Plaintiffs in his corporate capacity as Kyle Miller, LLC d/b/a Ridgewood Builders.
3. Counts I through VII of Plaintiffs' First Amended Complaint fail as a matter of law pursuant to FRCP 56.

WHEREFORE, Plaintiffs' First Amended Complaint should be dismissed as sanction for the intentional destruction of critical evidence. Alternatively, Counts I through VII of the Amended Complaint should be dismissed for those reasons set forth in the accompanying brief.

Respectfully submitted,

Dated: September 16, 2022

SECREST WARDLE



Christopher K. Cooke P35034
Attorneys for Defendants

A handwritten signature in blue ink, appearing to read "R. K. Loe".